

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

JUDY LITTLE,

Plaintiff,

v.

Civil Action No.: 1:17-cv-03931
Honorable _____

CELLCO PARTNERSHIP d/b/a
VERIZON WIRELESS,

Defendant.

NOTICE OF REMOVAL

Defendant Cellco Partnership d/b/a Verizon Wireless (“Verizon”), by counsel, pursuant to 28 U.S.C. §§ 1331, 1441 and 1446, hereby gives notice that the above-captioned matter is hereby removed to this United States District Court. Verizon states as follows as grounds for removal:

I. NATURE OF REMOVED ACTION

1. This removed case is a civil action filed on May 24, 2016, and then amended on August 3, 2017 in the Circuit Court of Mercer County, West Virginia, assigned Civil Action No. 16-C-166-WS, and captioned *Judy Little v. Verizon Wireless (VAW) LLC*.¹ Plaintiff served the Amended Complaint via the West Virginia Secretary of State on September 1, 2017. In accordance with 28 U.S.C. 1446(a), a copy of the docket sheet and a copy of all process, pleadings, and orders served in the state court action are attached hereto as “**Exhibit A.**”

II. TIMELINESS OF APPEAL

¹ In the *Complaint* filed by Ms. Little, Verizon is improperly identified as Verizon Wireless (VAW) LLC. The modification to the caption, as shown herein, is intended to remedy that error.

2. In accordance with the requirements of 28 U.S.C. §1446(b), this *Notice of Removal* (the “Notice”) is filed within thirty (30) days after Verizon first received notice that Plaintiff Judy Little (“Ms. Little”) filed her *Amended Complaint* and, therefore, first ascertained that this action was removable because Ms. Little is asserting claims pursuant to the Telephone Consumer Protection Act, 47 U.S.C. §§ 153 *et seq.* (“TCPA”).

III. VENUE IS PROPER

3. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2) because the events giving rise to this action occurred within the Southern District of West Virginia—specifically, within Princeton, Mercer County, West Virginia.

IV. GROUNDS FOR REMOVAL

4. Under 28 U.S.C. § 1441, “any civil action of which the district courts have original jurisdiction founded on a claim or right arising under the Constitution, treaties or laws of the United States shall be removable without regard to the citizenship or residence of the parties.”

5. The United States Supreme Court has unanimously held that private causes of action pursuant to the TCPA grant this Court original jurisdiction as such causes of action involve questions of federal law. *See Mims v. Arrow Fin. Servs., LLC*, 565 U.S. 368 (2012).

6. In this case, Ms. Little unambiguously amended her *Complaint* to specifically assert claims that Verizon violated the TCPA, thus triggering this Court’s federal question jurisdiction. *See Amended Complaint*, Ex. A, pp.1-2 and 4-5, ¶¶ 4–6, 18–26.

7. Furthermore, since original federal jurisdiction exists here, the Court acquires supplemental jurisdiction over any claims the Court determines raise purely state-law issues. *See* 28 U.S.C. § 1367(a) (noting that, apart from certain exceptions not applicable here, “in any civil

action in which the district courts have original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution.”).

8. Accordingly, the Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331.

V. NOTICE TO STATE COURT

9. Pursuant to 28 U.S.C. § 1446(d), notice is being served on all adverse parties and filed with the Circuit Court of Mercer County, West Virginia, where this case was originally filed and is pending.

WHEREFORE, Verizon respectfully removes this action to the United States District Court for the Southern District of West Virginia.

**CELLCO PARTNERSHIP d/b/a
VERIZON WIRELESS**

By: Lewis Brisbois Bisgaard & Smith LLP

/s/Matthew A. Nelson

Matthew A. Nelson (WV State Bar # 9421)

David A. Bosak (WV State Bar # 11947)

222 Capitol Street, Fifth Floor

Charleston, WV 25301

(304) 553-0166 (T) / (304) 932-0265 (F)

Matt.Nelson@lewisbrisbois.com

Dave.Bosak@lewisbrisbois.com

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

JUDY LITTLE,

Plaintiff,

v.

Civil Action No.: 1:17-cv-03931
Honorable _____

CELLCO PARTNERSHIP d/b/a
VERIZON WIRELESS,

Defendant.

CERTIFICATE OF SERVICE

I, Matthew A. Nelson, do hereby certify that on this 6th day of September, 2017, the foregoing *Notice of Removal* was electronically filed with the Clerk of the Court using the CM/ECF system, which will send a Notice of Electronic Filing to, and constitutes service on:

Ralph C. Young, Esq.
Christopher B. Frost, Esq.
Steven R. Broadwater, Jr., Esq.
Jed R. Nolan, Esq.
Hamilton, Burgess, Young & Pollard, PLLC
Post Office Box 959
Fayetteville, West Virginia 25840
ryoung@hamiltonburgess.com
cfrost@hamiltonburgess.com
sbroadwater@hamiltonburgess.com
jnolan@hamiltonburgess.com
Counsel to Plaintiff Judy Little

/s/Matthew A. Nelson

Matthew A. Nelson (WV State Bar # 9421)
222 Capitol Street, Fifth Floor
Charleston, WV 25301
(304) 553-0166 (T) / (304) 932-0265 (F)
Matt.Nelson@lewisbrisbois.com